

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	OAH No. 13-1401-MDS
A D)	Division No.
_____)	

DECISION

I. Introduction

A D is a minor who was receiving TEFRA Medicaid benefits. He applied to renew those benefits on August 23, 2013. On September 17, 2013, the Division of Public Assistance (Division) sent U T, A’s mother, written notice that A no longer qualified for TEFRA Medicaid (TEFRA) benefits and that his TEFRA benefits would only continue through the end of May 2014 and then be terminated thereafter. Ms. T requested a hearing to challenge the termination of those benefits.

A’s hearing was held on November 15, 2013. Ms. T represented A and testified on his behalf. B L, A’s care coordinator, testified on his behalf. Angela Ybarra, a Medical Assistance Administrator employed by the Department of Health and Social Services, represented the Division. Cheri Herman, the TEFRA program manager for the Division, testified on its behalf. Janet Cordell, R.N., and Wandall Winn, M.D., both testified on behalf of the Division.

The evidence shows that A’s psychiatric condition does not continue to meet the requirements of the TEFRA program. Consequently, the Division’s decision to terminate his TEFRA benefits after May 2014 is affirmed.

II. Facts

The following facts were established by a preponderance of the evidence.

A was receiving TEFRA benefits in August 2013. He applied to renew those benefits on August 23, 2013.¹ The Division denied the renewal on September 17, 2013 because he did not require an inpatient psychiatric hospital level of care.²

A is a disabled minor.³ He is currently 8 years old. He had a fall in 2010 which resulted in a skull fracture. He had a “[c]raniotomy with depressed skull fracture, debridement of necrotic brain and repair of dura and complex laceration” in October 2010. He had skull plate screws

¹ Ex. E, pp. 1 – 8.
² Ex. C, pp. 3 – 5.
³ Ex. D, p. 1.

removed in January 2011.⁴ He had a subsequent surgery to repair the left frontal skull in October 2012.⁵

A expressed suicidal thoughts in May 2012, when he was 7 years old.⁶ A then began receiving psychiatric care from No Name Services, Inc. (NNS). His September 2012 psychiatric evaluation found he was

Severely Emotionally Disturbed (SED) as indicated by one of the following: The client has, as a result of symptoms and maladaptive behavior(s), serious functional impairment in one or more areas of social functioning, including family, school, or community. The symptoms and maladaptive behavior(s) are not the result of intellectual, physical or sensory deficits.^[7]

That same psychological evaluation found him to have “impulse control issues as well as difficulty with social interactions.” It diagnosed him with “[m]ood disorder secondary to traumatic brain injury.”⁸ He has an additional psychiatric diagnosis of attention deficit hyperactivity disorder (ADHD).⁹

The NNS case progress notes from October 17, 2012 through May 7, 2013, reflect no psychosis and no continuing suicidal thoughts or homicidal thoughts, and conclude that A was at low risk.¹⁰ The October 17, 2012 case progress note indicates that A had scratched his sister, that he was hyperactive, and impulsive.¹¹ The February 12, 2013 case progress note indicates that A’s mother reported he was experiencing concentration and focus issues and had mentioned a few times “that he did not love himself.”¹²

A began receiving psychiatric care from No Name Services, Inc. (No Name) in late August 2013. His initial intake summary states that he has run away several times, that he has weekly tantrums, and that he has “aggressed against his mother and others.”¹³ His initial psychiatric evaluation, which was conducted on September 9, 2013, found no evidence of suicidal or homicidal ideation or intent, and no evidence of psychosis, delusions, or paranoia. It diagnosed him with Oppositional Defiant Disorder, Attention Deficit Disorder with hyperactivity, and

⁴ Ex. E, pp. 22 – 24.

⁵ Ex. E, pp. 30 – 31.

⁶ Ex. E, p. 16.

⁷ Ex. E, p. 17.

⁸ Ex. E, p. 18.

⁹ Ex. E, p. 15.

¹⁰ Ex. E, pp. 10 – 15.

¹¹ Ex. E, p. 15.

¹² Ex. E, p. 12.

¹³ Ex. 1, p. 5.

Posttraumatic Stress Disorder.¹⁴ During that evaluation, A's mother informed the psychiatrist that A "does 'really well in school' however he does get in trouble for 'violating other student's personal space and he gets bored easily.' Patient has been to the Principal's office for 'being told no and not able to calm himself down.'"¹⁵ A was suspended from school for a partial day on October 16, 2013 due to a fist fight with another student on the playground.¹⁶

Ms. T, A's mother, testified regarding A's behavior. During the 2012 – 2013 school year, he was sent home from school for disturbances numerous times. During the current school year, 2013 – 2014, he has been sent home several times. His behavior has improved since starting group therapy with No Name. During late July or early August 2013, he ran away and got about a mile away from home before she was able to find him. He fights with his younger sister (age 6), and has bruised and scratched her. She cannot take him to the store because he has temper tantrums.¹⁷

Janet Cordell is a registered nurse. She is employed by Qualis Health as a clinical nurse reviewer. She reviewed A's August 2013 application and other medical records to determine whether he continued to qualify for TEFRA benefits. She concluded that he did not because he did not display violent behavior and suicidal thoughts within the 30 day period preceding his application. Ms. Cordell explained that violent behavior was not a simple physical incident like a playground fight, but involved more serious behavior such as trying to burn or kill an animal, throwing a desk across the room, or trying to inflict bodily injury.¹⁸ Wandall Winn, M.D., is a board certified psychiatrist, who is a regional medical director for psychiatric reviews for Qualis Health. He also reviewed A's August 2013 application and other medical records and determined that A did not require a psychiatric hospitalization level of care.¹⁹

III. Discussion

The Medicaid program has a number of coverage categories. The TEFRA Medicaid category provides Medicaid eligibility for certain disabled children, regardless of their parents' income and resources. States are allowed, at their option, to provide benefits to children 18 years of age or less who qualify as disabled individuals under §1614 of the Social Security Act and

¹⁴ Ex. 1, p. 18.

¹⁵ Ex. 1, p. 17.

¹⁶ Ex. 2.

¹⁷ T testimony.

¹⁸ Cordell testimony.

¹⁹ Winn testimony.

who live at home rather than in an institution. Qualification is not based on medical diagnosis but rather on the level of care the child requires.²⁰ The portion of Alaska's TEFRA program involving Level of Care (LOC) determinations (the only aspect of TEFRA eligibility at issue in this case) is performed by the Division of Senior and Disabilities Services (DSDS).²¹ DSDS has in turn contracted with Qualis Health, a company headquartered in Seattle, Washington, to perform LOC assessments in TEFRA (and other) cases.²²

The Alaska regulation implementing TEFRA is 7 AAC 100.424, titled "Disabled child living at home." The regulation lists three separate eligibility categories, each of which have their own separate qualifying criteria. A's relevant eligibility category is that for a child who "needs a level of care offered in . . . (c) an inpatient psychiatric hospital."²³ In order to satisfy the eligibility requirements for this category, he must have had, in addition to other qualifying criteria,²⁴ at least one of the following:

- (A) psychotic symptoms, characterized by defective or lost contact with reality, hallucinations, or delusions;
- (B) a suicide attempt, in the 90-day period before the date of application;
- (C) suicidal thoughts, in the 30-day period before the date of application, that include a plan for suicide;
- (D) violent behavior as the result of an emotional disturbance, in the 30-day period before the date of application, characterized by a documented attempt by the child to cause injury to a person or substantial property damage;^{25]}

The evidence in this case does not show the presence of any of the four criteria. First, A's temper tantrums and having run away do not fit within any of the criteria. Second, there is no evidence of psychotic symptoms. Third, there is no evidence of a suicide attempt during the 90-day period preceding the August 23, 2013 application. Fourth, there is no evidence of suicidal thoughts during the 30-day time period preceding the August 23, 2013

²⁰ The statutory provisions establishing TEFRA are in § 1902(e) of the Social Security Act (42 U.S.C. § 1396a(e)(3)). The federal regulation implementing TEFRA is 42 CFR § 435.225.

²¹ See Division of Public Assistance *Aged, Disabled, and Long Term Care Medicaid Eligibility Manual* at Section 533(C)(5).

²² See Division of Public Assistance *Aged, Disabled, and Long Term Care Medicaid Eligibility Manual* at Section 533(E)(3).

²³ 7 AAC 100.424(a)(5).

²⁴ The applicable regulation, 7 AAC 100.424(c), contains five other elements that must each be satisfied in order to establish the required level of care. Although the Division's denial notice refers to four of those elements, 7 AAC 100.424(c)(2) – (5), this decision only addresses the requirements specific to 7 AAC 100.424(c)(2) as they were the only criteria raised by A and they are completely dispositive of this case.

²⁵ 7 AAC 100.424(c)(2).

application. Fifth, the only evidence in the record regarding causing injury to a person during the 30-day period preceding the August 23, 2013 was testimony from the mother regarding A and her daughter engaging in fights. This does not rise to the level of a “documented attempt by the child to cause injury to a person.”

The Division has the burden of proof in this case.²⁶ It has met its burden of proof. A’s behavior issues, although troubling, do not satisfy the criteria necessary to maintain his eligibility for TEFRA Medicaid.

IV. Conclusion

The Division’s decision to terminate A’s TEFRA Medicaid benefits after the end of May, 2014 is affirmed.

DATED this 12th day of December, 2013.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 27th day of December, 2013.

By: *Signed* _____
Name: Lawrence A. Pederson
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]

²⁶ 7 AAC 49.135.